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## Responsibility for the Restoration of the Hurricane Insurance Industry: Business Proposal or State Solution?

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## RESPONSIBILITY FOR THE RESTORATION OF THE HURRICANE INSURANCE INDUSTRY: BUSINESS PROPOSAL OR STATE SOLUTION?

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I.	INTRODUCTION.....	527
II.	INSURANCE: THE BUSINESS THAT CANNOT AFFORD PROTECTION.....	528
	A. <i>The Industry</i> .....	528
	B. <i>Florida's Response</i> .....	530
III.	THE IMPORTANCE OF REINSURANCE .....	532
	A. <i>Reinsurance</i> .....	532
	B. <i>The Florida Hurricane Catastrophe Fund</i> .....	534
IV.	THE HARD TRUTH .....	536
V.	THE PREEMPTION OF A VERY OLD STATUTE .....	538
	A. <i>Florida's Valued Policy Law</i> .....	538
	B. <i>The State Controversy</i> .....	540
	C. <i>Federal Preemption</i> .....	541
VI.	INTENTIONS, PLANS, PROPOSALS, & PROBLEMS .....	543
VII.	FLORIDA STANDS ALONE.....	546
VIII.	CONCLUSION .....	548

### I. INTRODUCTION

The concept of the free market has been honored throughout the history of the United States as advancing our economy by promoting competition.<sup>1</sup> While the free market is an integral part of American culture, difficulty develops when business practices overlap with public policy concerns.<sup>2</sup> Insurance companies that provide hurricane coverage are in business to make a

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1. See Katherine Swartz, *Justifying Government as the Backstop in Health Insurance Markets*, 2 YALE J. HEALTH POL'Y L. & ETHICS 89 (2001).

2. See *id.*

profit for themselves while the product they sell is protection for the insureds' health and safety.<sup>3</sup> Having a responsibility to look out for their insureds' best interests, as well as their owners' financial well-being, creates a conflict of interest.<sup>4</sup> The issue that will be examined in this article is whether, and to what extent, the federal or state government should become involved in the hurricane insurance industry.

Part II discusses the current conditions of the insurance industry as a whole and the consequences of the suffering hurricane insurance market. Part III will explain the need for reinsurance and its effect on the insurance industry. Part IV will analyze the effect the suffering insurance and reinsurance industry has on residents of Florida. Part V will discuss how the state government once became involved by enacting Florida's Valued Policy Law, and why that law no longer provides the protection it once did. Part VI of this article will explore how the state intends to provide a solution to the hurricane insurance problem in Florida. Part VII will then discuss a proposal for the Florida Legislature to take action and provide hurricane insurance to Florida residents. Part VIII will conclude that state government involvement is necessary to stabilize the hurricane insurance market and to protect its citizens' health, safety, and welfare.

## II. INSURANCE: THE BUSINESS THAT CANNOT AFFORD PROTECTION

### A. *The Industry*

All Florida residents who have mortgages are required by law to obtain homeowners insurance.<sup>5</sup> Homeowners insurance typically covers "everything except flooding caused by rising water."<sup>6</sup> An increasing number of policies are excluding wind damage caused by hurricanes.<sup>7</sup> Companies that choose to stay in the hurricane insurance market in Florida must increase rates to survive in the hurricane insurance industry.<sup>8</sup> Consumers cannot af-

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3. See FLA. STAT. § 215.555 (2006).

4. See *id.*

5. *Id.*; Interview with Walter Campbell, Sen., Fla. S., in Fort Lauderdale, Fla. (July 5, 2006) (audio on file with *Nova Law Review*).

6. BRYAN NORCROSS, HURRICANE ALMANAC 2006: THE ESSENTIAL GUIDE TO STORMS PAST, PRESENT, AND FUTURE 195 (2006).

7. *Id.*

8. See KEVIN M. MCCARTY ET AL., FLA. S., TASK FORCE ON LONG-TERM SOLUTIONS FOR FLORIDA'S HURRICANE INSURANCE MARKET 4 (2006), available at <http://www.fldfs.com/hurricaneinsurancetaskforce/TaskforceRS2/draftlts6.pdf> [hereinafter TASK FORCE 2006].

ford to pay “[t]hese skyrocketing insurance rates.”<sup>9</sup> Floridians are left with two options: spend an enormous amount of money protecting their homes from hurricanes, or not protect their homes from hurricanes at all.<sup>10</sup> Many are not even afforded the luxury of having an option as insurers increasingly refuse to write policies for homeowners who live in areas at greater risk.<sup>11</sup>

Hurricane Andrew’s economic impact in 1992 forced insurance companies to re-evaluate the hurricane insurance market in Florida.<sup>12</sup> Ranked as one of the ten most expensive United States catastrophes, Hurricane Andrew ranks number two causing property insurers to pay \$21.6 billion in property coverage to this date.<sup>13</sup> Residents of Florida sought “property and casualty insurers to fund the long process of rebuilding.”<sup>14</sup> As a result of Hurricane Andrew, “ten of the state’s insurers” went bankrupt.<sup>15</sup> Prior to Hurricane Andrew, insurers capitalized on the construction boom in South Florida by insuring homes at rates that were “inadequate to cover potential hurricane losses.”<sup>16</sup> “It is a gross understatement to say that the potential destruction resulting from a hurricane of Andrew’s magnitude was largely unanticipated both by the citizens of South Florida and their state and local governmental officials.”<sup>17</sup>

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9. Beatrice E. Garcia, *Keys Residents Storming Mad Over Insurance Rate Hikes: Keys Residents and Business Owners Voice Worries About Huge Insurance Rate Increases, Fearing Monroe County’s Economy Will Be Hurt*, KNIGHT RIDDER TRIB. BUS. NEWS, June 27, 2006, at 1 [hereinafter Garcia, *Keys Residents Storming*].

10. See TASK FORCE 2006, *supra* note 8, at 14.

11. Jonathan Brennan Butler, *Insurers Under Fire: Assessing the Constitutionality of Florida’s Residential Property Insurance Moratorium After Hurricane Andrew*, 22 FLA. ST. U.L. REV. 731, 733–34 (1995). Florida’s extremely high reading on the “hurricane property risk scale” varies between 300 and 600. Fritz Yohn, *Insurers Can Tame Hurricane Exposures*, NAT’L UNDERWRITER, June 12, 2006, at 12. This scale is based on two factors including the “likelihood of a hurricane striking most any area within the state” and the magnitude of property located in “counties having the highest hurricane likelihood.” *Id.* Therefore, Florida “[h]omeowners are being denied insurance or face crippling premiums.” Janice Smith, Letter to the Editor, *FPL Only Part of Hurricane Issues*, SUN-SENTINEL, June 14, 2006, at 20A.

12. See Butler, *supra* note 11, at 732–34. “Andrew was a wake-up call and learning experience for the Florida market in 1992.” See also TASK FORCE 2006, *supra* note 8, at 14.

13. TASK FORCE 2006, *supra* note 8, at 13. Hurricane Katrina is the most costly catastrophe to date incurring over \$38 billion in insured losses. *Id.*

14. Butler, *supra* note 11, at 732.

15. *Id.* at 733.

16. *Id.*

17. *Id.* at 732.

The 2004 and 2005 hurricane seasons further reinforced the desire for insurance companies to abandon the hurricane insurance market in Florida.<sup>18</sup> The 2004 season experienced four hurricanes “together creat[ing] 1.66 million claims resulting in \$20.9 billion dollars of insured losses in the Florida market.”<sup>19</sup> The 2005 season resulted in another four hurricanes causing insurance companies a great delay in “recovering, recapitalizing, and rebuilding” from the previous year.<sup>20</sup> The mentality shifted from preparing for the return of another devastating Category Five hurricane, like Andrew, to preparing for multiple storms of less magnitude, but of equal, if not greater, economic impact.<sup>21</sup>

Insurance companies used Andrew as a model in determining which insurance policies to renew or whether to renew them at all.<sup>22</sup> In response, insurers concluded that policies must be withdrawn in the coastal regions of Florida.<sup>23</sup> This conclusion remains as insurance companies increasingly reduce their risk of catastrophic loss by cutting back their level of exposure.<sup>24</sup> Decisions by insurance companies to cancel policies after being with an insured for “years and years without filing a claim” are the insurers’ reaction to “not making money in the Florida homeowners’ insurance market.”<sup>25</sup>

### B. *Florida's Response*

The state has used its police powers to provide disaster relief by “taking responsibility for the worst or highest risks” in the hurricane insurance market.<sup>26</sup> After Hurricane Andrew, the Florida Residential Property Casualty Joint Underwriting Association was established.<sup>27</sup> This association was to “provide a public/private response to the deterioration of insurance availabil-

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18. See TASK FORCE 2006, *supra* note 8, at 14. “[T]he hurricanes of 2004 and 2005 offered important lessons and insights to its citizens, legislators, insurers, reinsurers, and insurance regulators.” *Id.*

19. *Id.* at 11 (referring to Hurricanes Charley, Ivan, Frances, and Jeanne).

20. *Id.* at 12 (referring to Hurricanes Dennis, Katrina, Rita, and Wilma). As of March 6, 2006, “these four storms are estimated to have generated a combined 1.17 million claims and at least a combined \$9.3 billion in insured losses in Florida.” *Id.*

21. See TASK FORCE 2006, *supra* note 8, at 14.

22. Butler, *supra* note 11, at 733.

23. *Id.*

24. *Id.*

25. Wayne T. Price, *Brevard Faces Grim Reality of Insurance*, FLA. TODAY, Apr. 5, 2006, at A1 (quoting Sam Miller, the Executive Vice President of the Florida Insurance Council).

26. Swartz, *supra* note 1, at 90; see FLA. STAT. § 215.555(1)(a)-(b) (2006).

27. TASK FORCE 2006, *supra* note 8, at 40.

ity in the private market.”<sup>28</sup> In addition, the Florida Windstorm Underwriting Association was created by law to make secure windstorm coverage for residential policyholders unable to obtain it in the voluntary market.<sup>29</sup> Together, the associations covered approximately 1.35 million policies with an “exposure of almost \$86.5 billion.”<sup>30</sup>

Citizens Property Insurance Corporation (Citizens) was created in 2002 to encompass both entities.<sup>31</sup> Citizens’ rates are required by law to be higher than the rates of private insurers.<sup>32</sup> As a result, Citizens has a rate structure that is not meant to compete with the private market.<sup>33</sup> In fact, it is “[d]esigned to offer insurance only where the private market will not provide coverage” making it the “provider of last resort.”<sup>34</sup>

The 2006 hurricane season presented some obstacles for Citizens.<sup>35</sup> Poe Financial Group (Poe), one of South Florida’s largest property insurers, liquidated its Florida property insurance business.<sup>36</sup> Citizens, being the state’s insurer of last resort, then took over all of Poe’s property and casualty policies.<sup>37</sup> Not only did Citizens take over more than 300,000 policies from Poe, Citizens must also accommodate 50,000 new property and casualty applications it receives per month.<sup>38</sup> The “explosive” growth of Citizens has forced it to increase rates and decrease coverage.<sup>39</sup> Insurers insist that “[a] determination will have to be made on whether there is a public policy obligation to insure all structures in the state.”<sup>40</sup>

In addition to “insuring too many high-risk properties,” Citizens never fully recovered from the 2004 and 2005 hurricane seasons.<sup>41</sup> During those seasons, “Citizens collected \$1.2 billion in premiums, but paid out more than

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28. *Id.*

29. *Id.*

30. *Id.*

31. See FLA. STAT. § 627.351(6)(a)(2), (u)(2); Christopher Oster, Carrick Mollenkamp, & Chad Terhune, *Hurricane Damage: After Storms, Florida Wakes Up to a New Insurance Reality*, WALL ST. J., Sept. 7, 2004, at A1.

32. FLA. STAT. § 627.351(6)(m)(10).

33. *Id.* § 627.351(6)(m)(1)(a).

34. TASK FORCE 2006, *supra* note 8, at 40.

35. See Harriet Johnson Brackley, *Judge Orders Troubled Insurer to Liquidate: Citizens Ready to Take over Poe Policies*, SUN-SENTINEL, June 1, 2006, at 1D.

36. *Id.*

37. Randy Diamond, *Citizens Not Happy to Be No. 1*, TAMPA TRIB., June 29, 2006, at 1.

38. *Id.*

39. See Interview with Walter Campbell, *supra* note 5.

40. TASK FORCE 2006, *supra* note 8, at 40–41.

41. See Diamond, *supra* note 37.

\$3.9 billion in claims” incurring a loss of approximately \$2 billion.<sup>42</sup> Florida decreased the loss to Citizens by paying a portion of the deficit with sales tax revenues.<sup>43</sup> In exchange, the Florida State Legislature required Citizens to collect enough money from customers to provide for future damage.<sup>44</sup> This leaves Citizens without any other option but to increase rates.<sup>45</sup> The question is how much? “Insurance analysts say one of the determining factors as to if and how much premiums may rise depends on the hit reinsurers take.”<sup>46</sup>

### III. THE IMPORTANCE OF REINSURANCE

#### A. Reinsurance

Basically, reinsurance is insurance for insurance companies.<sup>47</sup> Insurance companies purchase insurance from reinsurance companies “to aid in covering larger-than-expected losses.”<sup>48</sup> As in any other business, a rate increase in the reinsurance industry results in a rate increase in the insurance industry.<sup>49</sup> Consumers cannot escape “trickle-down economics”<sup>50</sup> as the “investment outlook for the reinsurance industry is negative.”<sup>51</sup>

The reinsurance industry continues to undergo legal problems in regards to “bid rigging and improper reinsurance contracts.”<sup>52</sup> “[S]everal state attorneys general, . . . the SEC, and the Department of Justice” continue to conduct investigations on reports published in February 2006, indicating several “former executives at General Re Corp., a leading U.S. reinsurer,” committed fraud from a reinsurance deal in 2000.<sup>53</sup> Stemming from those fraud

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42. CATHERINE A. SEIFERT & JOE NIEDZIELSKI, STANDARD & POOR’S, INDUSTRY SURVEYS: INSURANCE: PROPERTY-CASUALTY 7 (July 13, 2006).

43. See TASK FORCE 2006, *supra* note 8, at 48; see Diamond, *supra* note 37.

44. Kathy Bushouse, *Florida Legislature Leaves Much Unresolved on Insurance Issue*, KNIGHT RIDDER TRIB. BUS. NEWS, May 9, 2006, at 1 [hereinafter Bushouse, *Florida Legislature*].

45. See *id.*

46. Darren Currin, *Commentary: Insurance Fears in Hurricanes’ Wake*, ST. LOUIS DAILY RECORD, Sept. 30, 2005, at 1.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. CATHERINE SEIFERT, STANDARD & POOR’S, SUB-INDUSTRY REVIEW: REINSURANCE (2006) [hereinafter SEIFERT 2006]. The most recent outlook for the reinsurance industry suggests it is neutral, but this is mostly due to the fact that many reinsurers were able to profit from the “mild hurricane season in 2006.” See CATHERINE SEIFERT, STANDARD & POOR’S, SUB-INDUSTRY REVIEW: REINSURANCE (2007).

52. SEIFERT & NIEDZIELSKI, *supra* note 42, at 6.

53. SEIFERT 2006, *supra* note 51.

charges, an ongoing investigation of many other reinsurers is taking place.<sup>54</sup> “Some insurers now advocate for a federal regulator that would allow them to bypass the current system that regulates insurance on a state-by-state basis.”<sup>55</sup> This seems unlikely to happen as “the National Association of Insurance Commissioners (NAIC), the organization of state insurance commissioners, [argue] that industry standards across state lines can be developed under the current system.”<sup>56</sup> The consequences of these ongoing investigations create barriers to an already unattractive market, “dampen[ing] investor enthusiasm for many reinsurance stocks.”<sup>57</sup>

Further, the insolvency of smaller reinsurers aid in further consolidation of the reinsurance market.<sup>58</sup> As “larger, financially stronger” reinsurers take over the industry, there is a concern that competitive pricing will soon disappear.<sup>59</sup> There is a strong indication that “reinsurers are reconsidering the risk/return relationships available when compared with other investment opportunities.”<sup>60</sup> The January 2006 market closed transactions at a slower rate than in the past, including 2005.<sup>61</sup> “[W]hile overall rates appear not to have increased dramatically, wind reinsurance along the Gulf States is reported to have risen substantially.”<sup>62</sup>

Legislators increasingly “face heightened public pressure” to provide solutions to the declining reinsurance market before it exacerbates any further.<sup>63</sup> In response to the public, former Florida Governor Jeb Bush signed legislation in May 2006 offering loans to insurers, encouraging them to write policies in Florida.<sup>64</sup> In addition, Citizens is required by law to “make its best efforts to procure catastrophe reinsurance at reasonable rates.”<sup>65</sup> However, “reasonable rates” are expected “to cover [a] projected 100-year probable maximum loss.”<sup>66</sup> The bottom line is “[i]nsurers are . . . buying more reinsurance protection and paying more for that coverage.”<sup>67</sup>

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54. *See id.*

55. SEIFERT & NIEDZIELSKI, *supra* note 42, at 5.

56. *Id.* at 5–6.

57. SEIFERT 2006, *supra* note 51.

58. SEIFERT & NIEDZIELSKI, *supra* note 42, at 1.

59. *See id.*

60. TASK FORCE 2006, *supra* note 8, at 13.

61. *Id.*

62. *Id.*

63. SEIFERT & NIEDZIELSKI, *supra* note 42, at 2.

64. *Id.*

65. FLA. STAT. § 627.351(6)(c)(10) (2006).

66. TASK FORCE 2006, *supra* note 8, at 52 (quoting Fla. Stat. § 627.351(6)(c)(9)).

67. SEIFERT & NIEDZIELSKI, *supra* note 42, at 7.



### B. *The Florida Hurricane Catastrophe Fund*

The problems with the residential property insurance market, caused by Hurricane Andrew, in effect created problems with the reinsurance market.<sup>68</sup> As reinsurers became more and more hesitant to provide coverage for insurers in Florida, state action was deemed necessary to stabilize the market.<sup>69</sup> Section 215.555 of the *Florida Statutes* created the Florida Hurricane Catastrophe Fund (FHCF) in an effort to protect the residents of Florida from another catastrophic hurricane loss.<sup>70</sup> Acting as a state administered reinsurance program, the FHCF will partially reimburse those insurers who experience such a loss.<sup>71</sup> Every property insurer who writes covered policies in Florida is required to purchase reinsurance from the FHCF.<sup>72</sup> This provides insurance companies with security and encourages them to conduct business in Florida.<sup>73</sup>

However, the overpowering combination of the 2004 and 2005 hurricane seasons caused the cash resources of the FHCF to become strained.<sup>74</sup> The four hurricanes in 2004 incurred insured losses of approximately \$21 billion from 1.67 million claims.<sup>75</sup> The FHCF valued their losses at \$3.85 billion of that total amount.<sup>76</sup> In 2005, Hurricane Wilma alone caused about \$7.9 billion in insured losses from residential property.<sup>77</sup> The FHCF expects to lose at least \$2.6 billion of that total amount.<sup>78</sup>

Further, computer models used to predict future economic impact of hurricanes proved to be grossly inaccurate.<sup>79</sup> Consumer demand surged as an inevitable consequence of the previous hurricane seasons.<sup>80</sup> As a result, the FHCF incurred a loss for which it did not prepare.<sup>81</sup> "With 10% adverse loss development," FHCF must reserve \$3.1 billion, the total amount of cash available, to be used for claims made from the 2005 losses.<sup>82</sup> Since the

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68. FLA. STAT. § 215.555(1)(b).

69. *Id.* § 215.555(1)(a).

70. *See id.* § 215.555.

71. *Id.* § 215.555(4)(a).

72. *Id.*

73. *See generally* FLA. STAT. § 215.555.

74. TASK FORCE 2006, *supra* note 8, at 47.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. TASK FORCE 2006, *supra* note 8, at 47.

80. *Id.*

81. *See id.*

82. *Id.*

FHCF's cash resources will be exhausted due to the 2005 claims, "there will not be any cash available to be carried forward for 2006 claims payments when the 2006 hurricane season begins."<sup>83</sup> Without the FHCF able to provide reimbursement, insurers will need to be issued revenue bonds to recuperate.<sup>84</sup> Legislators issued \$1.5 billion in bonds to help the FHCF recover from a \$1.41 billion deficit resulting from the 2005 hurricane season.<sup>85</sup> The FHCF borrowed an additional \$2.8 billion in preparation for the 2006 hurricane season.<sup>86</sup> Few future preventative measures exist for the FHCF.<sup>87</sup> Expansion of the monetary fund for the FHCF is not an option because Florida policyholders, including "all property and casualty policyholders excluding workers compensation and medical malpractice," would be placed in the position of funding the added coverage.<sup>88</sup> Reduction of the fund would worsen the problem as cash reserves would diminish at a faster rate, increasing the need to issue bonds.<sup>89</sup>

The *Florida Administrative Code* allows insurance companies in Florida to raise rates as long as they are approved by state regulators.<sup>90</sup> Among the few expense factors taken into consideration in each homeowner's rate filing is the cost of reinsurance.<sup>91</sup> In fact, reinsurance is broken down into specific expense factors which are taken into account when determining the cost of reinsurance in relation to the price of rates.<sup>92</sup>

State Farm Florida Insurance Co. (State Farm) "insures more than one million policyholders statewide."<sup>93</sup> The company submitted its rates early to state regulators in hope to secure and collect higher premiums.<sup>94</sup> As Florida's number two home insurer, a request was made "for the company's largest-ever rate increase in the state."<sup>95</sup> However, this request was made prior to learning of the significant increase in cost for reinsurance.<sup>96</sup> State Farm withdrew its initial request to reevaluate how high rates must be to make a

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83. *Id.*

84. TASK FORCE 2006, *supra* note 8, at 47.

85. Stephanie Horvath & Dara Kam, *State's Disaster Fund Boosted*, PALM BEACH POST, June 16, 2006, at 1D.

86. *Id.*

87. See TASK FORCE 2006, *supra* note 8, at 47.

88. *Id.*

89. *Id.*

90. See FLA. ADMIN. CODE r. 69O-170.013 (2006).

91. *Id.* r. 69O-170.014(10)(f).

92. *Id.* r. 69O-170.014(11).

93. Kathy Bushouse, *State Farm Aims Higher: Reinsurance Tab to Force Second Request for Even Steeper Rate Increases*, SUN-SENTINEL, July 7, 2006, at 1D.

94. *Id.*

95. *Id.*

96. *Id.*

profit.<sup>97</sup> This presents the question as to whether the FHCF, by providing additional insurance capacity, continues to serve its purpose to improve the state's economy and protect its citizens' health, safety, and welfare.<sup>98</sup>

#### IV. THE HARD TRUTH

Generally, the purpose for insurance is to provide security for its consumers.<sup>99</sup> Insurance companies guarantee their ability to provide money to their policyholders in situations where the policyholder might undergo an unaffordable, unforeseeable loss.<sup>100</sup> Thus, the reason why consumers purchase hurricane insurance is to gain some sense of assurance that they will be able to rebuild or reconstruct their home in the event of a catastrophic loss.<sup>101</sup> Without this guarantee, there would be no need for insurance companies.<sup>102</sup> Fear sets in when consumers are unable to afford to protect themselves with hurricane insurance.<sup>103</sup> The situation becomes worse when the consumer is no longer in control and is refused coverage entirely.<sup>104</sup>

As "no place in Florida is immune from hurricane risk," the need to protect one's home applies to every resident of Florida.<sup>105</sup> People who live along the coast cannot find hurricane insurance because private insurance companies refuse to write them policies.<sup>106</sup> This is because "practically all private insurers consider the [coast] too risky."<sup>107</sup> As a result, Citizens must provide them with the necessary insurance to protect them from potential hurricane damage.<sup>108</sup> However, as noted above, Citizens' rates must be significantly higher than those offered by private insurers.<sup>109</sup> Many cannot "afford to live on either coast or nearby."<sup>110</sup> The attitude of some is: "If you cannot afford the cost or it is not available in your area, you should move."<sup>111</sup>

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97. *Id.*

98. *See* TASK FORCE 2006, *supra* note 8, at 46.

99. *See generally* FLA. STAT. § 627.351 (2006).

100. *Id.*

101. *Id.*

102. *Id.*

103. Garcia, *Keys Residents Storming*, *supra* note 9.

104. *Id.*

105. TASK FORCE 2006, *supra* note 8, at 15.

106. Interview with Walter Campbell, *supra* note 5.

107. Garcia, *Keys Residents Storming*, *supra* note 9.

108. *See* FLA. STAT. § 627.351 (2006).

109. *Id.*

110. Marvin Meyerhoffer, *State Should Take a Role in Bolstering Citizens Insurance*, THE LEDGER (Lakeland, Fla.), Dec. 29, 2005, at A10.

111. *Id.*

However, the hard truth is that “millions of coastal homeowners remain inadequately insured and unprepared for the [next hurricane] season.”<sup>112</sup>

Even when Floridians are able to find residential hurricane insurance, it costs an enormous amount.<sup>113</sup> Some believe Floridians need to gain an understanding that insurance companies are businesses that need to make a profit to survive.<sup>114</sup> Since insurers are “working furiously” to secure a future profit, it is easy for them to forget the very purpose insurance companies were meant to serve.<sup>115</sup> Thus, homeowners are unable to secure insurance rates at reasonable amounts.<sup>116</sup> Moreover, Citizens simply cannot afford to cover every homeowner in Florida.<sup>117</sup> “[T]he bottom line on homeowners insurance is harsh: Costs more. Covers less.”<sup>118</sup>

Further, those who spend the money to be insured have significant difficulty collecting on their policy when a catastrophe actually does occur.<sup>119</sup> A hurricane’s impact on a community leads policyholders to make claims.<sup>120</sup> This causes insurance companies to incur a huge loss upon payment of every policy.<sup>121</sup> Therefore, insurance claims and disputes over coverage are inevitable.<sup>122</sup> Since many insurers “are not going to pay up,” multiple lawsuits are filed against insurance companies.<sup>123</sup> In fact, lawsuits are still taking place from hurricanes that occurred in Florida about ten years ago.<sup>124</sup>

The on-going need for a solution progresses as fewer options exist every day.<sup>125</sup> Florida State Senator Walter “Skip” Campbell explains:

We are going to have a major crisis statewide with people that can[not] afford property insurance rates and that [is] going to create a crisis in multiple sectors of our economy. [P]eople will not be able to sell their houses because there won’t be buyers because

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112. *Survey Shows Residents in Hurricane-Vulnerable States Under Insured*, NEW ORLEANS CITY BUS., May 16, 2006, at 1.

113. Smith, *supra* note 11.

114. Robert Sims, Editorial, *Insurance Industry Needs Regulating*, SUN-SENTINEL, June 14, 2006, at 20A.

115. Beatrice E. Garcia, *Check Your Coverage Carefully*, MIAMI HERALD, May 24, 2006, at 13 [hereinafter Garcia, *Check Your Coverage*].

116. *Id.*

117. See TASK FORCE 2006, *supra* note 8, at 40–41.

118. Garcia, *Check Your Coverage*, *supra* note 115.

119. Daniel Ostrovsky, *Following Hurricanes, Litigation Against Insurance Companies Increases*, THE DAILY RECORD (Baltimore), Aug. 31, 2005, at 1.

120. See SEIFERT & NIEDZIELSKI, *supra* note 42, at 1–2.

121. *Id.*

122. See Ostrovsky, *supra* note 119.

123. *Id.*

124. *Id.*

125. Interview with Walter Campbell, *supra* note 5.

buyers can[not] afford to pay the taxes and insurance. So, the banks are going to hurt, the mortgage companies are going to hurt, [the] real estate agents are going to hurt, and [the] general economy is going to start hurting because we will not have people who can, in fact, live in our communities to perform the jobs that we need; such as teaching, such as police officers . . . this is going to go one level even further down because we are seeing some of the commercial property owners . . . having the same problems as the residential community, which is they're getting hit with increased property taxes and almost astronomical property insurance rates. So, what do they do? [They increase rent.] This is the beginning of the problem and it's more far-reaching than anybody can ever think about.<sup>126</sup>

Awareness of the increasing insurance problems in Florida has caused many residents to voice their opinions as to what actions the state should take in response to this predicament.<sup>127</sup> As "the continued availability of property insurance . . . is critical to the state's economic survival," the controversial topic of whether state action is necessary in response to hurricane insurance problems, once again, presents itself to the Florida Legislature.<sup>128</sup>

## V. THE PREEMPTION OF A VERY OLD STATUTE

### A. *Florida's Valued Policy Law*

Problems with the insurance industry prompted the Florida Legislature to act as long ago as 1899 when its first valued policy law was put into action.<sup>129</sup> "A valued policy is 'one in which the value of the thing insured, and also the amount to be paid thereon in the event of loss, is settled by agreement between the parties and inserted in the policy.'"<sup>130</sup> The "principal object and purpose" of Florida's valued policy law is to determine the amount of money the insurer must pay the insured in the event of a total loss, prior to the occurrence of such an event.<sup>131</sup> Moreover, it "requires the insurer to ascertain the insurable value at the time of writing the policy," and to write it

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126. *Id.*

127. *See, e.g.,* Sims, *supra* note 114; Smith, *supra* note 11.

128. TASK FORCE 2006, *supra* note 8, at 10.

129. *See* John V. Garaffa, *Florida's "Valued Policy" Law—The Eye of the Storm*, 79 FLA. B.J. 8 (Apr. 2005).

130. R. Jason Richards, *Florida's "Valued Policy Law": Clarifying Some Recent Misconceptions*, 79 FLA. B.J. 18, 19 (Dec. 2005) (quoting *Cont'l Cas. Co. v. Curl*, 721 So. 2d 431, 433 (Fla. 3d Dist. Ct. App. 1998)).

131. *See* Garaffa, *supra* note 129, at 8; *see also* FLA. STAT. § 627.702 (2006).

therein.<sup>132</sup> The statute plays a major role in insurance law as it “is part of every real property casualty insurance policy written on property in Florida.”<sup>133</sup>

The statute serves to prevent future problems between insurers and policyholders by resolving the issue of how much the insurer must pay without the trouble of negotiation or litigation.<sup>134</sup> It “operates like a liquidated damages clause rather than as an indemnity contract.”<sup>135</sup> The statute states:

In the event of the total loss of any building, structure, mobile home . . . or manufactured building . . . located in this state and insured by any insurer as to a covered peril . . . the insurer’s liability under the policy for such total loss, if caused by a covered peril, shall be in the amount of money for which such property was so insured as specified in the policy and for which a premium has been charged and paid.<sup>136</sup>

The statute emphasizes that two requirements must be met to qualify under the valued policy law.<sup>137</sup> First, an insurer must insure the property as a covered peril.<sup>138</sup> Second, the damage incurred must amount to a total loss.<sup>139</sup> However, “the statute does not define the term ‘total loss.’”<sup>140</sup> For over a century, it has been left to the courts to determine and define what constitutes a total loss.<sup>141</sup> Two tests evolved by case law including the identity test and the restoration test.<sup>142</sup>

First, the identity test will apply if the damage caused to the home “is so severe that it has lost its identity and character.”<sup>143</sup> This test is satisfied even if the home is capable of being used for an alternative useful purpose.<sup>144</sup> The identity test is also met in the event of a constructive total loss.<sup>145</sup> A constructive total loss occurs when “an ordinance or regulation prevents repair”

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132. Garaffa, *supra* note 129, at 8.

133. *Mierzwa v. Fla. Windstorm Underwriting Ass’n*, 877 So. 2d 774, 775 (Fla. 4th Dist. Ct. App. 2004).

134. *See* FLA. STAT. § 627.702.

135. Richards, *supra* note 130, at 19.

136. FLA. STAT. § 627.702(1)(a).

137. *See id.* § 627.702(1)(b); *Mierzwa*, 877 So. 2d at 775.

138. § 627.702(1)(b); *Mierzwa*, 877 So. 2d at 775.

139. § 627.702(1)(b); *Mierzwa*, 877 So. 2d at 775.

140. *See* FLA. STAT. § 627.702; Garaffa, *supra* note 129, at 10.

141. Garaffa, *supra* note 129, at 10.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* at 10–11.

of the damage caused by the hurricane.<sup>146</sup> As a result, the identity is essentially lost.<sup>147</sup> Second, the restoration test applies in situations where “a reasonably prudent owner” would not rebuild property to its pre-loss condition with the remains of the structure.<sup>148</sup>

#### B. *The State Controversy*

The interpretation of the valued policy law in Florida has set forth controversy between insurers and policyholders since its inception.<sup>149</sup> In *Mierzwa v. Florida Windstorm Underwriting Ass’n*<sup>150</sup> in June 2004, the valued policy law was found to apply to different covered perils insured by multiple insurers.<sup>151</sup> A homeowner’s wind insurance was provided by one carrier, while the flood insurance was provided by another carrier.<sup>152</sup> The wind insurer’s “policy expressly excluded flood damage.”<sup>153</sup> A local ordinance was applied by the court to determine whether the home was a total loss.<sup>154</sup> It provided that damage caused to a structure requiring repairs amounting to more than fifty percent of its existing value must conform to the building code.<sup>155</sup> A determination was made “that the total cost of repairs to the insured building would exceed half of its value.”<sup>156</sup> Following this determination, the building had to be torn down and the site elevated.<sup>157</sup> Thus, the court held that despite the separate policies covering separate perils, the combination of the damage caused by wind in addition to the damage caused by flood amounted to a total loss and resulted in the application of the valued policy law.<sup>158</sup>

The court of appeals found no causation requirement in establishing a total loss because the valued policy law was “simple and straightforward.”<sup>159</sup> According to the court, the valued policy law only requires the covered peril

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146. Garaffa, *supra* note 129, at 11.

147. *See id.*

148. *Id.*

149. *Hartford Fire Ins. Co. v. Redding*, 37 So. 62, 65 (Fla. 1904) (holding the valued policy law is constitutional).

150. 877 So. 2d 774 (Fla. 4th Dist. Ct. App. 2004).

151. *Id.* at 776.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Mierzwa*, 877 So. 2d at 776.

156. *Id.*

157. *See id.* at 776 n.3.

158. *Id.* at 775.

159. *Id.*; Garaffa, *supra* note 129, at 13.

“be a covered peril” and not “*the* covered peril causing the entire loss.”<sup>160</sup> Moreover, *Mierzwa* established that courts may find a total loss by combining policies and applying the valued policy law even in situations where an insurer expressly excludes certain types of coverage.<sup>161</sup> “Florida courts have for years upheld an insurer’s right to recover under two separate policies in the event of a total loss under the valued policy law.”<sup>162</sup> However, legislative intent continues to be questioned as to whether the valued policy law is meant to apply in these specific situations where perils are expressly excluded from coverage.<sup>163</sup> The controversy exists precisely because the insurance carrier is liable for the face amount of the policy only when a total loss is established.<sup>164</sup>

### C. Federal Preemption

In a recent decision, the United States District Court of the Northern District of Florida held that Florida’s Valued Policy Law was preempted by federal law.<sup>165</sup> In *Greer v. Owners Insurance Co.*,<sup>166</sup> two separate insurance policies provided separate types of coverage for one home.<sup>167</sup> One insurance company only provided wind and fire insurance, expressly excluding flood insurance from the policy.<sup>168</sup> The other insurance policy only covered damage caused by floods.<sup>169</sup> The flood insurance policy was provided by the National Flood Insurance Program “established by Congress, through the National Flood Insurance Act.”<sup>170</sup> The court placed emphasis solely on the fact that the director of the Federal Emergency Management Agency (FEMA) controls “the payment or disallowance of all flood insurance claims.”<sup>171</sup> Those “[c]laims are paid out of a National Flood Insurance Fund in the United States Treasury.”<sup>172</sup> Therefore, all the terms and conditions of

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160. *Mierzwa*, 877 So. 2d at 776 (The court places strong emphasis on the distinction between “*the*” covered peril and “*a*” covered peril by using italics in the opinion).

161. *See id.* at 779.

162. Richards, *supra* note 130, at 18.

163. Garaffa, *supra* note 129, at 5.

164. *See Mierzwa*, 877 So. 2d at 775.

165. *Greer v. Owners Ins. Co.*, 434 F. Supp. 2d 1267, 1275 (N.D. Fla. 2006).

166. *Id.*

167. *Id.* at 1269–70.

168. *Id.* at 1270.

169. *Id.*

170. *Greer*, 434 F. Supp. 2d at 1274; *see* 42 U.S.C. § 4001 (2000).

171. *Greer*, 434 F. Supp. 2d at 1274.

172. *Id.*



flood insurance policies are mandated and controlled by federal, not state, regulations.<sup>173</sup>

It usually takes the combination of wind and flood damage for a building to lose its identity or appearance, thus making it a total loss for which the valued policy law would apply.<sup>174</sup> Since the state cannot regulate the amount of compensation one might receive after incurring flood damage, the valued policy law will no longer apply in many situations.<sup>175</sup> The state's solution to help its residents receive reimbursement towards protecting and securing one's home is now outdated and essentially useless.<sup>176</sup>

The state has taken few steps toward providing a solution to Florida's insurance problem since the first valued policy law was enacted in 1899.<sup>177</sup> Florida's legislature has placed little responsibility on property and casualty insurance companies to charge affordable rates.<sup>178</sup> This includes whether hurricane insurance must be provided by insurers in addition to the more profitable lines already offered, or if an insurer is required to provide hurricane insurance at all.<sup>179</sup> "Many people have a *philosophical problem* with the government[] being [involved] in the insurance business."<sup>180</sup> "There is now a widespread belief among economists, policy analysts, and policy-makers that government should intervene in a market only when conditions for competition are not in place, and the market fails to be efficient."<sup>181</sup> There is no question that the hurricane insurance industry in Florida has lost its appeal to private insurers and the market continues to decline.<sup>182</sup> "[T]he Florida legislature [must] get tough with the insurance industry," the only question is how.<sup>183</sup>

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173. *Id.*

174. *See generally* Mierzwa v. Fla. Windstorm Underwriting Ass'n, 877 So. 2d 774 (Fla. 4th Dist. Ct. App. 2004).

175. *See Greer*, 434 F. Supp. 2d at 1275.

176. *See generally id.*

177. *See generally* Garaffa, *supra* note 129, at 8.

178. *See* FLA. ADMIN. CODE ANN. r. § 69O-170.013 (2004). A negative inference can be drawn from the administrative code. *Id.* It provides certain procedural steps an insurer must take prior to changing rates, but does not provide a cap for which rates may not exceed. *Id.*

179. *Id.*

180. NORCROSS, *supra* note 6, at 238 (emphasis added).

181. Swartz, *supra* note 1, at 90.

182. *See* Mark Hollis, *Insurance Policy: Four Varied Views*, SUN-SENTINEL, July 26, 2006, at 10B.

183. Smith, *supra* note 11.

## VI. INTENTIONS, PLANS, PROPOSALS, &amp; PROBLEMS

One option for the federal government is to shift the risk of very high cost coastal properties away from carriers by “tak[ing] on the role of reinsurer.”<sup>184</sup> A memorial written by the Florida Legislature was presented to the United States Congress urging their support in establishing a National Catastrophe Insurance Program (Program).<sup>185</sup> Included in the proposal, the Florida Legislature urged the United States Congress to:

1. Provid[e] consumers with a private market residential insurance program that provides all-perils protection.
2. Promot[e] personal responsibility through mitigation; promot[e] the retrofitting of existing housing stock; and provid[e] individuals with the ability to manage their own disaster savings accounts that, similar to health savings accounts, accumulate on a tax-advantaged basis for the purpose of paying for mitigation enhancements and catastrophic losses.
3. Creat[e] tax-deferred insurance company catastrophe reserves to benefit policyholders. These tax-deferred reserves would build up over time and [would] only be eligible to be used to pay for future catastrophic losses.
4. Enhanc[e] local and state government’s role in establishing and maintaining effective building codes, mitigation education, and land use management; promot[e] state emergency management, preparedness, and response; and creat[e] state or multistate regional catastrophic risk financing mechanisms such as the Florida Hurricane Catastrophe Fund.
5. Creat[e] a national catastrophe financing mechanism that would provide a quantifiable level of risk management and financing for mega-catastrophes; maximiz[e] the risk-bearing capacity of the private markets; and allow[] for aggregate risk pooling of natural disasters funded through sound risk-based premiums paid in correct proportion by all policyholders in the United States.<sup>186</sup>

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184. Swartz, *supra* note 1, at 99. The government can shift high cost risk from carriers by either “provid[ing] financial coverage outright” or by providing reinsurance. *Id.*

185. Fla. HM 541 (2006). A memorial is “[a] written statement of facts presented to a legislature . . . as a petition.” BLACK’S LAW DICTIONARY 445 (2d ed. 2001).

186. Fla. HM 541 (2006).

In sum, the Program would provide a uniform approach in responding to catastrophes.<sup>187</sup> A catastrophe is defined by the Insurance Services Office as “an event that causes \$25 million or more in insured property losses and affects a significant number of property/casualty policyholders and insurers.”<sup>188</sup> Therefore, natural disasters are not the only types of catastrophes.<sup>189</sup>

In response to the memorial, three bills were introduced to the United States Congress.<sup>190</sup> All three address at least one element of the national catastrophe fund proposal.<sup>191</sup> One bill proposes to create a “Consumer Hurricane and Earthquake Protection Fund.”<sup>192</sup> This bill applies to all natural catastrophes, such as tornadoes, volcanic eruptions, and hurricanes.<sup>193</sup> If enacted, it would provide reinsurance to insurance companies at lower rates than they can obtain on the private market.<sup>194</sup> Similar to Florida’s Hurricane Catastrophe Fund, the Consumer Hurricane and Earthquake Protection Fund “would be responsible for losses up to amounts determined on a state-to-state or regional basis.”<sup>195</sup> States that already have catastrophe funds, such as Florida, would pay losses up to their limits prior to receiving income from the national fund.<sup>196</sup> In effect, “[t]he national fund would sell reinsurance to the state funds.”<sup>197</sup> As the Florida Hurricane Catastrophe Fund struggles to recapitalize, this proposed bill does not set forth future safeguards against an unexpected depletion of funds.<sup>198</sup>

Another bill proposes to create the “Catastrophe Savings Account Act of 2006.”<sup>199</sup> Adding a chapter to the Internal Revenue Code of 1986, this Act would allow consumers “to manage a personal, tax-exempt Catastrophe Savings Account.”<sup>200</sup> The account, acting as a trust fund, would secure money to be set aside for the exclusive use of designated beneficiaries in

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187. *See id.*

188. Fla. H.R. Comm. on NCIP, HM 541 (2006) Staff Analysis 3 (rev. Apr. 12, 2006) [hereinafter HM 541 Staff Analysis].

189. *Id.*

190. *Id.* at 3–4.

191. *Id.*

192. *Id.* at 3.

193. HM 541 Staff Analysis, *supra* note 188, at 3–4.

194. *Id.* at 3.

195. *Id.* at 4.

196. *Id.*

197. *Id.*

198. *See* HM 541 Staff Analysis, *supra* note 188, at 3–4.

199. *Id.* at 4.

200. *Id.*

their time of need.<sup>201</sup> The bill would establish certain requirements to be met delineating which money would qualify under the Act.<sup>202</sup>

The third bill presented to Congress proposes to create the “Policyholder Disaster Protection Act of 2005.”<sup>203</sup> This bill suggests that Congress provide incentives to insurance companies to provide natural disaster insurance by revising the current tax laws.<sup>204</sup> It recommends that insurance companies have the ability to defer their taxes on claims arising from natural disasters.<sup>205</sup> The event must be a windstorm, earthquake, fire, flood, volcanic eruption, tsunami, winter catastrophe, or hail.<sup>206</sup> Further, it must be designated a catastrophe by either the President of the United States, the Property Claim Services, “or by the chief executive official of a [s]tate or territory of the United States, or the District of Columbia.”<sup>207</sup>

While all three bills purport to move toward the goal of providing stability in the hurricane insurance industry, “[t]hey don’t deal with reality or solve problems, they just move money around.”<sup>208</sup> Since damage caused by hurricanes is unpredictable, it is difficult for insurance companies to calculate future projections.<sup>209</sup> A national catastrophe fund, applying to all natural catastrophes, is said to help make future projections more predictable.<sup>210</sup> In effect, this would allow insurance companies to “make a reasonable estimate of what their losses will be and what they have to charge.”<sup>211</sup> A national catastrophe fund conceptually would provide a solution for stabilizing the hurricane insurance market, while allowing consumers to have access to such funds.<sup>212</sup> Since flood insurance policies are controlled by federal regulation,<sup>213</sup> a conclusion may be drawn that natural catastrophe insurance policies should be controlled by federal regulation as well. However, similar plans have been presented to the United States Congress in the past and have failed simply because there was not a nationwide natural catastrophe insurance market.<sup>214</sup>

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201. *Id.* One wonders if the tax benefit of having this trust account would ever amount to enough to compensate for a significant loss in the event of a natural disaster. *Id.*

202. HM 541 Staff Analysis, *supra* note 188, at 4.

203. *Id.* at 4.

204. *Id.*

205. *Id.*

206. *Id.*

207. HM 541 Staff Analysis, *supra* note 188, at 4.

208. NORCROSS, *supra* note 6, at 239.

209. *Id.* at 237.

210. *See id.*

211. *Id.*

212. *See id.* at 238.

213. 42 U.S.C. § 4001 (2000).

214. Hollis, *supra* note 182; *see generally* SEIFERT & NIEDZIELSKI, *supra* note 42, at 5–20.

On November 7, 2006, Florida elected Charlie Crist as its new governor.<sup>215</sup> Throughout the race, all four candidates formulated ideas concerning hurricane insurance issues, as it was “one of the most talked-about items in the Florida governor’s race.”<sup>216</sup> Since then, Florida residents increasingly “demand” government action.<sup>217</sup> Governor Crist also recognizes that “the need to deliver Floridians relief from high insurance prices” must take priority.<sup>218</sup> In response, the Florida Legislature called a special session specifically addressing the issue of hurricane insurance.<sup>219</sup> While all of the proposals attempted to lessen the problem, none of them provided an actual solution to the problem.<sup>220</sup> “In the last three decades, economists and, increasingly, politicians have argued that the free market advances economic growth and opportunity more effectively than government policies intended to achieve such goals.”<sup>221</sup> However, the goal of supporting efficiency is based on the existence of an already competitive marketplace.<sup>222</sup> Another factor to consider is that the property insurance industry “spends millions of dollars a year to influence public policy in Florida.”<sup>223</sup> As such, the legislators are not likely to enforce or create any significant regulations on private insurance companies.<sup>224</sup>

## VII. FLORIDA STANDS ALONE

The business of hurricane insurance has a responsibility to provide protection for their clients, which results in a conflict of interest. The company’s desire to make a profit no longer accommodates the client’s desire for safety resulting in a lose-lose situation. In a high risk industry, such as Flor-

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215. Florida Department of State: Division of Elections—Election Results: November 7, 2006 General Election, Official Results, <http://election.dos.state.fl.us/elections/resultsarchive/index.asp?ElectionDate=11/7/2006> (select “Governor and Cabinet”) (last visited May 27, 2007).

216. Hollis, *supra* note 182.

217. *Off to a Stormy Start*, SUN-SENTINEL, Jan. 17, 2007, at 1A.

218. Kathy Bushouse, Mark Hollis, & Linda Kleindienst, *Insurance Rates May Drop 25%*, SUN-SENTINEL, Jan. 18, 2007, at 1A.

219. Kathy Bushouse, *What Wrecked Property Insurance?*, SUN-SENTINEL, Jan. 13, 2007, at 1A.

220. *See id.* The proposals included an expansion of the FHCF, freezing Citizens’ rates at the 2006 levels, requiring private insurers who sell homeowners insurance in other states to also sell homeowners insurance in Florida, and allowing homeowners to buy property insurance without hurricane coverage. *Id.*

221. Swartz, *supra* note 1, at 89.

222. *Id.* at 89–90.

223. Jason Garcia & John Kennedy, *Insurance Giants Wield Their Might: Companies Spend Millions on Campaigns and Lobbying*, SUN-SENTINEL, Jan. 16, 2007, at 1A.

224. *See generally id.*

ida's hurricane insurance industry, one option is for the insurance companies to charge higher rates making hurricane insurance unaffordable.<sup>225</sup> Another option is for the government to require insurance companies to charge lower rates causing their businesses to suffer.<sup>226</sup> A third option is for the federal government to provide more funds for reinsurance and hope that insurance companies will lower prices if they can attain lower reinsurance rates.<sup>227</sup>

The first option has already taken place as premium rates for hurricane insurance coverage have increased, leaving many Floridians uninsured.<sup>228</sup> The second option will help lower hurricane insurance rates, but companies will attempt to balance their loss by increasing rates in other types of insurance they offer.<sup>229</sup> While the third option will help the coastal states and other states regularly prone to natural disasters, as already discussed, it is not necessary to every state's needs.<sup>230</sup>

As certainty and stability in the natural catastrophe insurance market is not enough of an incentive for the federal government to establish a national solution, the alternative option is for the state government to "provide financial coverage outright."<sup>231</sup> Florida's unique tropical atmosphere brings severe storms and hurricanes, causing significant damage to residents' homes every year.<sup>232</sup> There is no discrepancy that "insurance companies are *not* in the insurance business when it comes to hurricanes."<sup>233</sup> "[I]f the government acts to cover the costs of the worst risks, an inefficient market can become more efficient, and a non-functioning market can be stimulated to form."<sup>234</sup>

In furtherance of protecting both the interests of the insurance company and the interests of the policyholder, the state should provide hurricane insurance to its residents. This type of "radical" state action is justified because hurricane insurance in Florida is now recognized as a necessity, not a privilege.<sup>235</sup> Since the government has the ability to tax, the amount of money previously given to insurance companies to cover hurricane insurance

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225. SEIFERT & NIEDZIELSKI, *supra* note 42, at 1–2.

226. *See id.* at 21.

227. *See* Swartz, *supra* note 1, at 99.

228. *See, e.g.,* Stephanie Horvath, *Premium Pressures Force Tough Choices: Homeowners Insurance Rate Hikes*, PALM BEACH POST, May 29, 2006, at 1F (explaining how one couple dropped their insurance coverage when the hurricane coverage increased 194%).

229. *See* SEIFERT & NIEDZIELSKI, *supra* note 42, at 20.

230. *See* Swartz, *supra* note 1, at 99.

231. *See id.*

232. *See* NORCROSS, *supra* note 6, at 195, 236.

233. *Id.* at 238.

234. Swartz, *supra* note 1, at 99.

235. *See* Price, *supra* note 25 (quoting Bill Newton, the executive director of the Florida Consumer Action Network).

should instead be invested and reserved by the state government for catastrophic situations. A condition precedent to being entitled to these funds would be the requirement that each Florida resident assess the value of their home qualifying them for a certain amount of insurance based on various factors. By completely removing hurricane insurance from Florida's insurance market, insurers no longer have to concern themselves with raising prices or litigation following unpaid claims. The insurance industry will continue to remain profitable, as it will offer all other lines of insurance. Further, residents of Florida will effectively secure hurricane coverage with the guarantee that there will be enough funds to pay for their claims.

### VIII. CONCLUSION

The catastrophic hurricanes which Florida has experienced over the past few years have caused many people to suffer. As a result, insurance companies reacted by decreasing their exposure to the market. In effect, most residents of Florida are left without any hurricane insurance at all. Others are left spending enormous amounts of money protecting their homes. The decline of the hurricane insurance industry in Florida is part of a chain reaction causing the state's economy to suffer.<sup>236</sup> People from other states are less likely to move to Florida.<sup>237</sup> This prevents Florida residents from having the opportunity to sell their homes.<sup>238</sup> Further, Florida residents who cannot afford to purchase hurricane insurance come to the realization that they will need to move to a state with lower risk exposure.<sup>239</sup>

Florida's few remedies offered, including Citizens and the Florida Hurricane Catastrophe Fund, are not adequately functioning to meet the many needs which they were intended to address.<sup>240</sup> Both Citizens and the Florida Hurricane Catastrophe Fund are still trying to recapitalize after the previous two hurricane seasons.<sup>241</sup> At the same time, an increasing number of hurricane insurance companies are evacuating the Florida market.<sup>242</sup> Therefore, recapitalization for Citizens will be very difficult as it fulfills its duty as the insurer of last resort and assumes every policy that is unable to acquire protection.<sup>243</sup>

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236. See Interview with Walter Campbell, *supra* note 5.

237. *Id.*

238. *Id.*

239. *Id.*

240. See generally TASK FORCE 2006, *supra* note 8.

241. *Id.* at 40-42.

242. *Id.*

243. *Id.* at 40.

The need for the government, federal or state, to restore the natural catastrophe insurance market is ripe for review.<sup>244</sup> Current proposals for government involvement do not provide an ultimate solution to stabilizing Florida's insurance market.<sup>245</sup> The state urges Congress to aid in Florida's fight for survival from catastrophic events.<sup>246</sup> At the same time, the federal government restrains from interfering with state policies against natural disasters. This is due to the belief that it would not be of concern to every state. State government involvement will provide stability in the hurricane insurance market, but will not address every problem hurricane insurance presents to insurers, policyholders, or the state itself. Therefore, the controversy remains as to how the state or federal government should react as government involvement with the insurance industry will infringe on traditional concepts of free trade.<sup>247</sup> Still, recognition of government involvement is evolving allowing for future changes to be made to adapt to new problems that arise.

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244. *Id.*

245. *See* Hollis, *supra* note 182.

246. *Id.*

247. *See id.*